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Criminal Constitutions^{*}

Peter T. Leeson[†]

David B. Skarbek[‡]

Abstract

Why do criminals use constitutions? This paper argues that constitutions perform three functions in criminal organizations. First, criminal constitutions promote consensus by creating common knowledge among criminals about what the organization expects of them and what they can expect of the organization's other members. Second, criminal constitutions regulate behaviors that are privately beneficially to individual criminals but costly to their organization as a whole. Third, criminal constitutions generate information about member misconduct and coordinate the enforcement of rules that prohibit such behavior. By performing these functions, constitutions facilitate criminal cooperation and enhance criminals' profit. To examine our hypothesis we examine the constitutions of two criminal organizations: 18th-century Caribbean pirates and the contemporary Californian prison gang, La Nuestra Familia.

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[†] Address: University of Chicago, Booth School of Business, Becker Center on Chicago Price Theory, 5807 S. Woodlawn Ave., Chicago, IL 60637, USA. Email: peter.leeson@chicagobooth.edu.

[‡] Address: Department of Economics, George Mason University, MSN 3G4, Fairfax, VA 22030, USA. Email: dskarbek@gmu.edu.

1 Introduction

Nearly all kinds of criminal organizations rely on constitutions. Twenty-two of the 37 street gangs Jankowski (1991: 78-82) studied have written constitutions. Sicilian Mafiosi follow a largely unwritten code of rules; and recently police found a written set of “ten commandments” outlining the Mafia’s core “laws” (Gambetta 1993; Lubrano 2007). Kaminski (2004) identifies extensive (yet unwritten) rules dictating nearly every aspect of incarcerated Polish prisoners’ lives, from what words are acceptable to use in greeting a stranger to how and when to use the bathroom. Even Caribbean pirates had constitutions (Leeson 2007a, 2009a, 2009b). The National Gang Crime Research Center considers constitutions so central to criminal organizations that the use of a constitution is one of the defining characteristics it uses when classifying gangs (Knox 2006: 22-25).

Criminal organizations’ common use of constitutions surprises many people. Most observers expect either that the interactions between outlaws are themselves lawless or that outlaws maintain order in their organizations through charismatic and fear-instilling “bosses” who wield unconstrained power in their organizations.¹ This surprise is warranted. It does seem strange that individuals whose way of life is predicated on flouting one set of laws (the government’s) would be sticklers about following laws of their own.² Why are constitutions so popular with criminals? And what purpose do criminal constitutions serve?

Our theory of criminal constitutions is rooted in the idea of profit-maximizing criminals. To maximize profits, indeed, in many cases, to make any profits at all, criminals must cooperate

¹ As Leeson and Rogers (2009) point out, some criminal organizations come closer to approximating this latter situation than others. However, even the most “boss-driven” criminal organization, the Sicilian Mafia, is regulated by a constitution at some level.

² The parallels between criminal organizations and nation states extend beyond written constitutions. The literature on organized crime argues that they provide services traditionally performed by governments—enforcement of contracts and protection of property rights—when legitimate governments cannot or will not do so (see, for instance, Gambetta 1993; Fiorentini and Peltzman 1995; Skaperdas 2001; Sobel and Osoba 2009).

with one another. Criminals cannot rely on government to create or enforce laws governing their activities or interactions.³ Further, criminal organizations may find it difficult to secure cooperation among their members because their members are criminals. Unlike legitimate citizens, criminals have demonstrated a willingness to engage in precisely those behaviors— theft and violence—that pose the greatest threat to cooperation. They are therefore especially unlikely to avoid such behaviors “naturally” or for others’ sake.

To prevent such activities from undermining the profitability of cooperation, criminals devise constitutions that create and enforce rules that promote productive intra-organizational interactions and prevent behavior that is detrimental to their organization.⁴ We argue that criminal constitutions achieve this by performing three functions. First, criminal constitutions promote consensus by creating common knowledge among criminals about what the organization expects of them and what they can expect of the organization’s other members. Second, criminal constitutions regulate behaviors that are privately beneficially to individual criminals but costly to their organization as a whole. Third, criminal constitutions generate information about members’ misconduct and coordinate the enforcement of rules that prohibit such behavior. Criminal organizations adopt constitutions because they facilitate cooperation and enhance profits.⁵

To examine our hypothesis we examine the constitutions of two criminal organizations: 18th-century Caribbean pirates and the contemporary Californian prison gang, La Nuestra

³ There is an extensive literature that examines self-governance theoretically and empirically (see, for instance, Benson 1990; Ellickson 2005; Leeson 2007b, 2007c, 2007d, 2008, 2009e; Schaeffer 2008).

⁴ The difficulties of criminal enterprise extend beyond cooperation within the organization and to strategic cooperative and non-cooperative games with victims, other criminals, and the police. See, for example, important work by Konrad and Skaperdas (1997, 1998), Gambetta (1994), and Smith and Varese (2001).

⁵ The organizational issues confronting criminals are part of a larger literature on the economics of crime that examines the determinants of crime (Levitt 2004; Glaeser, Sacerdote, and Scheinkman 1996), its social costs (Anderson 1999), optimal deterrence theories, (Levitt 1998), and policy implications (DiIulio 1996; Miron and Zwiebel 1995). This literature was pioneered by Becker (1968). See also, Anderson (1979); Reuter (1985); Jennings (1984); Arlacchi (1989); Dick (1995); Konrad and Skaperdas (1998); Garoupa (2000); Chang et al. (2005).

Familia. We focus on pirates' and La Nuestra Familia's criminal organizations and associated constitutions for three reasons. First, they allow us to consider the emergence and use of constitutions in criminal organizations engaged in very different kinds of crime. Pirates primarily raised their revenue by plunder. In contrast, prison gangs (although also engaged in theft and murder) earn much of their revenue through voluntary illicit transactions, such as narcotics distribution. Second, these criminal organizations' ethnic mixes are very different. La Nuestra Familia is an ethnically homogenous criminal organization. In contrast, pirate ships were remarkably diverse. This has an important effect on the emphases given to different aspects of these criminal organizations' constitutions. Finally, although both of these criminal organizations rely on constitutions, their organizational structures are very different. Pirate organization was extremely "flat" and concentrated in a small centralized area—the pirate ship (Leeson and Rogers 2009). La Nuestra Familia is a hierarchically organized criminal firm that exists across many prisons and whose members are dispersed across a large state. By comparing how constitutions function in these two contrasting criminal organizations, we're able to better understand criminal constitutions' purpose and the logic driving their adoption.

2 A Theory of Criminal Constitutions

Like legitimate firms, the allure of profit motivates criminal enterprise. To successfully pursue profit, criminals must cooperate with one another. The criminal organization—a collection of criminals working together in the same criminal business toward a common end—is the traditional means of such cooperation. Even when a particular criminal enterprise does not require team production, it still behooves criminals in the same industry to cooperate, if only to

cartelize production (Leeson and Rogers 2009). The illicit nature of criminals' business precludes their reliance on government to facilitate cooperation, so criminals must be self-reliant.

Constitutions perform three functions that help criminals create cooperation. First, constitutions create consensus by generating common knowledge about the organization's rules. If the criminals who compose an organization have different ideas and expectations about what members' rights and duties consist of, how the organization does or should work, or what the organization's goals are, conflict is likely and criminals will often work at cross-purposes. In contrast, common knowledge exists when all members of an organization know the rules, everyone knows that everyone knows the rules, and everyone knows that everyone knows that everyone knows the rules, *ad infinitum*.⁶

Constitutions create common knowledge by making the organization's rules explicit. They enumerate the most critical expectations of members' behavior, such as how members join, the rules of organizational decision making, the rules of commitment, the rights of membership, and restrictions on members' behavior.⁷ Common knowledge about the organization's rules creates common expectations among the organization's members. Whether they are written or unwritten, because they are *constitutional* rules, the organization requires that all members be introduced to these rules and familiar with their essential components. The organization introduces potential members to constitutional rules so that potential members have an understanding of what the rules entail when making their decision about joining. Common

⁶ On the role of common knowledge in facilitating criminal behavior by 18th-century merchant sailors, see Leeson (2009c).

⁷ Successful criminal cooperation within the organization is necessary but not sufficient for the organization to succeed. Characteristics of life outside of the criminal organization, such as the local economy, also affect their ability to thrive. For example, examining the 'Ndrangheta in Northern Italy, Varese (2006a) argues that construction companies' reliance on illegal workers provided an important opportunity for the 'Ndrangheta to establish itself. These two spheres—one within the organization and the other, the environment the organization acts in—can affect each other too. For example, the reciprocal influence between the Yakuza and Japanese films on organized crime led to the latter's decline and reduced the former's reputational capital (Varese 2006b).

expectations promote intra-organizational consensus by putting all of the organization's members "on the same page" with respect to duties, privileges, and obligations of their and others' membership. By creating this common knowledge, constitutions greatly reduce the potential for intra-organizational conflicts.

Criminal constitutions also promote consensus by creating "entrance requirements" for would-be members. If each would-be member must acknowledge and agree to the organization's constitutional rules before he can join, every other member of the organization can have greater confidence that the would-be member's intentions comport with their own. Requiring *ex ante* agreement to constitutional rules serves to sort would-be organization members into those who agree to be bound by the organization's constitutional rules, and thus are permitted membership, and those who refuse to be bound by these rules, and thus are denied membership. The organization therefore consists only of criminals who agree to be bound by the same set of rules that other members have agreed to be bound by.

Having all of a criminal organization's members' expectations aligned is particularly important for outlaws precisely because they are outlaws. The possibility of a disgruntled organization member informing law enforcement about sensitive information poses a serious threat to the organization's existence and profitability. Because of this threat, consensus is especially important in criminal organizations. In contrast, legitimate organizations do not typically fear a dismissed employee, even when disgruntled, because they are not engaged in illegal activity. Furthermore, state-enforced contracts, such as non-disclosure agreements, effectively protect legitimate organizations' sensitive information. Thus, while having the same high level of constitutional commitment across members is critically important for criminal organizations, it is not so important for legitimate organizations.

Second, criminal constitutions regulate individual behaviors that are privately beneficial but harmful to the organization. In legitimate organizations, individuals have opportunities to engage in behaviors that improve their own situation but adversely affect others in the organization. This is also true in criminal organizations. For instance, the leaders of a criminal organization may use their positions of authority to prey on lower-ranking members. If lower-ranking members must devote resources to avoiding their superiors' predation, organizational productivity declines. Unless the organization's leader is the sole residual claimant on the organization's profits (in which case he fully capitalizes the productivity losses of his predation), he may have an incentive to engage in predation.

Alternatively, lower-ranking organization members may be tempted to engage in activities that undermine their colleagues' welfare. For example, a drug-selling gang may have an agreement with a neighboring gang not to sell drugs in the latter's territory. This agreement is beneficial for both gangs as a whole because it prevents a costly war. However, an individual gang member of the former group can benefit by "chiseling" and selling drugs in the other gang's territory against the agreement. If his chiseling goes undetected, this gang member will enjoy profits that his fellow gang members do not. However, if the other gang detects him, the chiseler's behavior will lead to a war against his gang, which will harm the chiseler, but by only a fraction of the total harm his gang incurs.

Several other behaviors that members of criminal organizations may engage in can also generate significant negative spillovers for their colleagues. Consider, for example, "communication cheating." Because they wish to avoid arrest and incarceration, criminal organizations often create rules restricting the manner and timing of inter-criminal communication. For example, prison gang members develop elaborate codes and ciphers, learn

obscure languages (such as the Aztec language *Nahuatl*), hide messages in artwork, and even write letters in urine, which correctional officers are less likely to see, but can be revealed by a knowing recipient.⁸ Communication restrictions are very important for the overall criminal organization but are costly for individual organization members to follow. It is difficult and unpleasant to write and decode secret messages written in urine. An individual gang member may desire to avoid these costly communication techniques but, in doing so, he risks providing evidence that can incriminate members of the entire organization. This is especially so in the United States where the Pinkerton Doctrine makes each co-conspirator in a criminal enterprise responsible for reasonably foreseeable crimes committed by all other members of the organization. Each member's ability to commit crimes covertly therefore significantly affects each other's livelihoods (*Pinkerton v. United States*, 328 U.S. 640 [1946]). Constitutional rules that deter such behaviors prevent privately beneficial but organizationally costly behaviors that threaten to undermine organization members' ability to cooperate. In this way, constitutions help criminals cope with divergences between intra-organizational private and social costs that would otherwise threaten criminals' ability to work together for profit.

Third, criminal constitutions generate information about member misconduct and coordinate the enforcement of the organization's rules. Enforcing rules can be difficult. In the absence of explicit rules defining acceptable behavior, it can be hard for members to know whether one of their colleagues' questionable behaviors is legitimate or not. Further, if one member observes misconduct, he may be unlikely to intercede to stop it. If he alone challenges his comrade's behavior, he may be subject to reprisals. Without an explicit rule that prohibits the observed behavior, the member may lack confidence in his ability to successfully challenge his comrade. If he alone expects to challenge his comrade, he may also feel that he does not have the

⁸ For an excellent discussion of the rules governing inter-criminal communication, see Gambetta (2009).

support of others required to do so successfully. Even if an organization member is willing to risk challenging and attempting to discipline another member, he may find it hard to do so if effective discipline, such as ostracism, must be jointly produced.

Criminal constitutions help overcome these obstacles to rule enforcement. Because constitutions explicitly define acceptable behavior and stipulate penalties for violating such behavior, they make rule violations easier to detect and coordinate members' response to these violations. Constitutions clarify ambiguities about when misconduct has occurred and about how members are supposed to react to such behavior. Additionally, by creating common expectations among all organization members about how to handle misconduct, constitutions assist the enforcement of their terms by improving the probability that multiple members will challenge prohibited behavior by another member. In this way, constitutions also make jointly produced punishments possible.

Criminal constitutions vary considerably in their length, level of detail, and focus. Some organizations emphasize one of the three functions discussed above, while other organizations emphasize different functions. These differences reflect particular criminal organizations' specific needs. For example, given the different criminal activities Caribbean pirates and California prison gangs are engaged in, and the different contexts in which they operate, these criminal organizations have rather different criminal constitutions. Despite these variations in emphasis, both organizations' constitutions perform all three functions discussed above. In the analyses that follow we recount elements of each of these criminal organizations' constitutions to illuminate the three functions of criminal constitutions that our theory identifies. The Appendix to this paper contains each organization's constitution in full. In that Appendix we code each

element of both criminal organizations' constitutions comprehensively to correspond to the three functions of criminal constitutions in our theory.

3 A Parchment for Pirates

Early 18th-century pirates plied the waters of the Atlantic Ocean, Gulf of Mexico, Caribbean, and parts of the Indian Ocean. They earned their revenue by plundering merchant ships. Successful piracy required team production. One pirate wasn't enough to sail a pirate ship capable of seizing rich prizes. The average early 18th-century pirate crew carried about 80 men and was very diverse (Rediker 1987: 256). A sample of 700 pirates active in the Caribbean between 1715 and 1725 reveals that thirty-five percent were English, twenty-five percent were American, twenty percent were West Indian, ten percent were Scottish, eight percent were Welsh, and two percent were Swedish, Dutch, French, and Spanish (Konstam 2002: 9). Other pirates came from Portugal, Scandinavia, Greece, and East India (Marx 1996: 103). Furthermore, according to historian of piracy Kenneth Kinkor (2001: 200), more than a quarter of the average early 18th-century pirate crew was black.

The organizational unit of Caribbean pirates was the pirate crew. The crew's organization was remarkably "flat." At the top of the crew was a captain, and below him were a few other officers, such as the quartermaster; but the captain had very little power. In fact, he wielded no special authority except in times of battle and, like other pirate officers, was democratically elected by his crew.

Pirates' forged written constitutions, called "articles of agreement," to facilitate cooperation in their criminal organization. Each crew created its own constitution, though because of interactions between pirates who sailed with different crews, constitutions tended to

be similar from one ship to the next. Pirate constitutions established the crew's mechanism of organizational decision making, specified the terms of crewmembers' compensation, described how to address crewmember disagreements, and elaborated pirates' system of social insurance, which provided various sums to pirates injured on the job, depending on the injury.

Most important for our analysis, pirate constitutions also created basic behavioral rules, such as those prohibiting theft and violence, regulated various activities that were likely to generate negative externalities for the crew, and specified punishments for rule infractions. Through these articles, history's allegedly most reckless and uncontrolled criminals promoted organizational consensus, prevented socially destructive activities within their organizations, and coordinated the enforcement of their organization's rules.

Given pirates' diversity, pirate constitutions were concerned mostly with promoting intra-crew consensus. They achieved this in two ways. First, pirate constitutions made the ship's rules explicit. Indeed, pirate constitutions were written documents. There was therefore nothing surprising to the members of "Black Bart" Roberts' pirate crew that "*If any Man were found seducing any of the latter Sex [women], and carry'd her to Sea, disguised, he was to suffer Death,*" or that if anyone "*defrauded the Company to the Value of a Dollar . . . Marooning was their Punishment*" (Johnson 1726-1728: 211-212).⁹ Every crewmember knew these and the crew's other rules, knew that everyone else knew them, and knew that everyone knew that everyone knew them, and so on. Consequently, members of the same pirate crew had common expectations about what the crew required of them and what was in turn required of other crewmembers, which facilitated consensus among them.

Second, pirate constitutions facilitated consensus by requiring every would-be member of the crew to swear to the organization's articles before they could join. "All [pirates] swore to

⁹ Italics here and in quotations from Roberts' crew's constitution below are in original.

'em," sometimes on a Bible or, for one pirate crew, "upon a Hatchet for want of a Bible" (Johnson 1726-1728: 342). When pirate crews overtook merchantmen, and merchant sailors suggested their desire to join the pirates, pirates provided them with the crew's constitution and asked them to make their mark. As one pirate observer put it, "When ever any enter on board of these Ships voluntarily, they are obliged to sign all their Articles of Agreement" (Downing 1737: 107). This practice performed the function of selecting into the pirate crew only those sailors who found the ship's rules agreeable and thus were willing to be bound by them. Because of this function, all members of a pirate crew not only knew that everyone else was aware of these rules, but also that they knew that others knew this, and so forth. The signature of every crewmember to the constitution also created common knowledge about other crewmembers' support of the rules. By creating such common knowledge, pirates created consensus and were able "to prevent Disputes and Ranglings afterwards" (Johnson 1726-28: 342).

Pirate constitutions regulated crewmember activities that were privately beneficial to the individual but harmful to the crew. On a pirate ship, the activities most likely to undermine crew cooperation in this way were activities liable to lead to on-board fights. For example, although the individual pirate might like to enjoy unrestricted drinking rights, if this led him to clash with other crewmembers and a firefright broke out on ship, the conflict would jeopardize the entire crew's safety. Thus Roberts' crew's constitution, for example, prohibited gambling—"No person to Game at Cards or Dice for Money"—prohibited pirates from taking women to sea, and even restricted drinking—"The Lights and Candles to be put out at eight a-Clock at Night: If any of the Crew, after that Hour, still remained enclined for Drinking, they were to do it on the open Deck" (Johnson 1726-1728: 211-212). By regulating these and other potentially collectively

destructive activities that pirates would have otherwise been inclined to engage in for personal benefit, pirate articles prevented crewmember conflict.

Pirate constitutions coordinated the enforcement of their organization's rules by specifying rule infractions and stipulating specific punishments to be applied in each case. Pirates relied on an officer, the democratically elected quartermaster, to administer rule infractions in most cases. The quartermaster had an incentive to enforce the crew's rules since his democratically elected position depended on satisfying the crew's popular will, which supported rule enforcement. Since the quartermaster couldn't be everywhere all of the time, it was also important for crewmembers to agree about what constituted a rule infraction and how to punish it. Pirate constitutions assisted this task by explicitly defining misconduct. For example, if a pirate was observed drinking somewhere on the ship outside of the deck after 8 pm, his fellow crewmembers knew he was breaking a rule, and he knew that they knew this.

Further, pirate constitutions explicitly defined punishments for rule violations. According to Roberts' crew's constitution, for example, desertion was punished with "*Death or Marooning*," and theft from a fellow crewmember was punished by "*slit[ting] the Ears and Nose of him that was Guilty*" and "*set[ting the thief] . . . on Shore, not in an uninhabited Place, but somewhere, where he was sure to encounter Hardships*" (Johnson 1726-1728: 211-212). By stipulating explicit punishments for various rule violations, pirate constitutions created common expectations among all crewmembers about how misconduct would be handled. And, by putting every member of the crew "on the same page" with respect to rule infractions, pirate constitutions increased the likelihood that all crewmembers would support the proscribed punishment, which facilitated its enforcement. This result diminished any given crewmembers' incentive to break one of the organization's rules.

By promoting consensus, preventing organizationally costly crewmember behaviors, and coordinating the enforcement of their rules, Caribbean pirates facilitated criminal cooperation that made pirating, and thus the considerable profits that could flow from this criminal employment, possible. Pirate articles didn't work perfectly in this regard, of course. Pirates still fought with one another. Some pirates managed to steal from their fellow rogues. And intra-crew conflict sometimes grew so great that crews were forced to dissolve. However, considering the criminals these articles were designed to govern, pirate constitutions worked well, enabling some crews to earn handsome sums (see, for instance, Leeson 2009b).

4 A Constitution for Convicts

La Nuestra Familia (Spanish for "Our Family") prison gang controls Northern California prison cellblocks and neighborhoods. It earns profits through robbery, murder for hire, and various other criminal exploits; though its most important source of revenue is narcotics distribution (Federal Bureau of Investigation 2008; California Department of Justice 2003).

Hispanic inmates established the gang in the 1960's. To do so, the gang's founders wrote "The Supreme Power Structure of La Nuestra Familia," a lengthy criminal constitution that details the structure and operational protocols of La Nuestra Familia's criminal organization.¹⁰ The Nuestro General, to whom the constitution granted "absolute authority," initially led the organization. He supervised ten Captains, each of whom resided in a different correctional facility. Each of these captains in turn directed regiments consisting of Lieutenants and Soldiers.

La Nuestra Familia (henceforth, NF) confronts substantial organizational difficulties. Law enforcement officials estimate its membership between 400 to 600 incarcerated members;

¹⁰ The NF constitution has changed over the years. We focus on the constitution as it was originally written. It is taken from a recent history of the Nuestra Familia (Fuentes 2006) and reproduced in the Appendix.

and approximately 1,000 additional “associates,” who, though not official NF members, regularly work for the gang (Lewis 1980: 133; Fuentes 2006: 297). Unlike Caribbean pirates, whose members sailed together in one crew, the NF’s members are scattered through the California prison system and in Northern California neighborhoods. Running the equivalent of a large business without the aid of government-enforced contracts, with the additional constraints of incarceration, and with members dispersed across a large geographic area seems virtually impossible. Yet the NF’s constitution successfully facilitates this criminal organization’s operations by creating consensus, constraining organizationally harmful behavior, and generating information about misconduct.

The NF constitution creates consensus by clarifying members’ expectations through making organizational duties explicit. For example, according to the constitution, “It is the sacred duty of a *familianos guerrero* [warrior] to do battle for La Nuestra Familia, and no soldado should feel that because he fought for his O that he is entitled to special privileges. All that matters is that you as a *guerrero* of La Nuestra Familia are living up to your responsibilities.” The constitution also requires that “No member of this O shall put material things, whether it be drugs, money, women, or punks (as related to the *pinta*) before the best interest of La Nuestra Familia or a *familianos*” and that “No *familiano* shall lie about his position in La Nuestra Familia nor when discussing *familianos* business to a superior or a brother member” (Fuentes 2006: 10). Further, the NF constitution requires all gang members to swear to work “for the betterment of its members and the building up of this O on the outside into a strong and self-supporting familia” and to “work solely for this objective and will put all personal goals and feelings aside (Fuentes 2006: 5).

Like Caribbean pirates, who used agreement to their constitutions to filter organizational membership by requiring all members to explicitly agree to the organization's rules, the NF constitution also creates consensus by making sure that every person who joins the NF explicitly acknowledges familiarity with the constitution and agrees to its provisions. According to the NF constitution, "All present familianos in said O La Nuestra Familia acknowledges said constitution upon reading it and will be held accountable for his actions if said constitution is not followed" (Fuentes 2006: 6). Notably, all organization members swear allegiance to the constitution rather than to a particular gang leader.

The NF constitution also creates consensus by enshrining the organization's policy of "blood in, blood out," which requires that "A Familiano will remain a member until death or otherwise discharged from the O" (Fuentes 2006: 5). Because of this constitutional provision, gang members know that to exit the organization they must pay the ultimate price. This rule gives gang members a strong incentive to create consensus and cooperation within the organization. Mandatory lifetime membership also lowers the uncertainty associated with frequently changing organization members. Given the high constitutionally created barriers to entering and exiting the organization, radical changes in its composition, which might disturb organizational consensus, are less likely.

The NF constitution prevents organization members from engaging in privately beneficial, but organizationally harmful, activities by creating rules that prohibit such activities. In the NF, the most important such behavior that must be prevented is gang leader self-dealing. The NF's hierarchical structure permits the organization to reduce decision-making costs for many issues that would be very costly or in some cases impossible to decide if the entire

organization had to consult. However, a hierarchical structure also empowers leaders with authority they may be tempted to abuse for personal benefit.

For example, since exit is very costly, the general may have an incentive to abuse his power and mistreat his underlings. To prevent this, the NF constitution gives Captains the right to impeach the general for misconduct. According to the constitution, the “NG may be impeached from office where it is the opinion of all commanders holding office at that time that he isn’t working in the best interest of the organization” (Fuentes 2006: 5). For example, in 1978, NF members learned the General was embezzling tens of thousands of dollars from the organization’s treasury. According to a former high-ranking member, the general denied “any wrong doing and refused to relinquish any financial records. Believing that something should be done, NF members charged [the general] with misappropriating NF funds and impeached him” (Fuentes 2006: 28). When the General refused to relinquish his post and return the funds, the organization invoked the constitutionally prescribed punishment for such a crime—death (Fuentes 2006: 28). Surprisingly, the General lived through the organization’s attack on his life. But the NF expelled him from the gang and he remained on the organization’s hit list.¹¹ Because the General was embezzling resources that the Captains had a partial claim on, it was in their interest to initiate the constitutionally specified process of enforcement to put a stop to it. However, if each individual Captain was unsure about the rules or his authority to censure a higher-ranking member, this harmful behavior may have continued. Constitutional rules provided common knowledge about what constituted a violation, so members were able to coordinate enforcement through constitutionally established mechanisms.

¹¹ Former law enforcement members have identified other situations in which organizations members impeached a leader for violating the NF’s rules. See, for instance, Morales (2008).

NF Captains, who control their own regiments, may be similarly tempted to abuse their authority for personal gain at the organization's expense. The variety of potential abuses is large and ranges from stealing from underlings to shirking in organizational duties. To prevent such behavior the NF constitution empowers the General "to discharge any commander that is negligent in the functions of his position" (Fuentes 2006: 4). Since the General is a partial residual claimant on the revenues created by the NF's activities, it is in his interest to enforce such punishments providing that doing so is not prohibitively costly. By clarifying his demotion of the negligent Captain as a legitimate act of rule enforcement, as opposed to an abuse of his authority, to the gang's other members and coordinating these members' support of this act, the NF constitution reduces the General's cost of enforcing such punishments to make this possible. For instance, the NF leadership demoted one captain outside of prison for being lax in his operations and failing to properly enforce the NF's order within his regiment in favor of a Captain who would do so (Reynolds 2008).

The NF constitution creates information about when organizational misconduct occurs and coordinates organization members' response to such behavior by creating an official complaint process that members may use to inform the organization about colleagues' misconduct. Such misconduct includes mistreatment by their superiors and mismanagement by their superiors who are, for example, running their regiment inefficiently. According to the NF constitution, "if a familianos soldado feels that the power or powers of the structure in his regiment is misusing their appointed authority against him due to conflicting personalities, he has the right as an honorable member of this O to appeal to the supreme commander" (Fuentes 2006: 8). During times of peace, Soldiers may complain to Captains or the General if Lieutenants violate constitutional rules or unfairly demote members. Lieutenants may appeal to the General if

they have grievances against the Captain of their regiment or if he is derelict in his duties. Since Soldiers suffer directly if their Lieutenants mistreat them and Lieutenants suffer directly if their Captains mistreat them, both groups have an incentive to appeal to such mechanisms to enforce the organization's rules against misbehaving superiors and the constitution's coordinating effect makes doing so sufficiently inexpensive.

When organization members file grievances the constitution requires that "upon receiving a complaint from one of his soldados . . . [the Nuestro General] will appoint a committee of no less than three soldados from that particular clan to investigate said charges, and each is to report to the NG" (Fuentes 2006: 4).¹² This information-generating process is important for three reasons. First, it provides an orderly and peaceable mechanism for investigating and resolving disagreements between organization members. Second, by involving multiple members of the organization, this process helps generate common knowledge about suspected rule violations and, if these suspicions turn out to be supported, helps generate common knowledge that a rule violation has occurred and requires punishment, facilitating the enforcement of constitutionally specified rules.¹³ Finally, by making the procedure for addressing potential rule violations explicit, the NF constitution coordinates organization members on how to respond to rule violations and ensures that there will in fact be a response. Potential rule violations in such a large organization are liable to slip through the cracks, especially if members who observe them

¹² Other gangs also use official complaint processes to coordinate the enforcement of rules. Evidence about the Melanic Islamic Palace of the Rising Sun prison gang, for example, sheds light on what happened when a member filed a complaint accusing another member of being a law enforcement informant in a past court case. The leader recorded the accusation, requested evidence on the person's guilt, and shared this information with other members who reached the conclusion that the individual was guilty. The gang leaders conveyed their judgment, writing "That Melid #2 [the criminal organization's name] have competently witnessed by personally reading the [court] transcripts that the information contained therein displays a true violation of Sup. Const., Art. V, Cl.5" (Knox 2004).

¹³ Gang members who are not directly harmed by a rule violator's behavior are willing to aid gang members who are directly harmed because at some point the former expect to seek the punishment assistance of the latter when a rule violator does directly harm them. Gang members who refuse to help their colleagues now will be refused help by their colleagues in the future. Gang members are therefore led through repeated interaction to find it in their interest to assist others in enforcing constitutional rules even when they do not immediately or directly benefit by doing so.

are unsure about if or how to address them. The NF's constitution attenuates this problem by creating an explicit means of addressing potential rule violations, which creates information about such violations and helps ensure that members follow the rules.

5 Conclusion

It would be a mistake to think that criminals always strictly follow their organization's constitution. Just like legitimate governments, criminals may violate or ignore their constitutions. Similarly, like governments, criminals may come to interpret their constitutions in ways that are at odds with their "original intent." Even when they are followed, criminal constitutions' helpfulness in promoting social order and cooperation within criminal organizations is imperfect. Criminal constitutions were not able to eliminate all conflict in Caribbean pirate crews or in the NF. Like their legitimate counterparts, criminal constitutions cannot promise perfect organizational efficiency and harmony. Still, as we discuss below, existing evidence on which criminal organizations use constitutions provides support for the idea that criminal constitutions are effective at least some of the time, which may explain why many criminals use them.

The commonality of criminal constitutions is surprising to many. But once one understands the challenges that criminal organizations face—most notably their need for cooperation—and constitutions' effectiveness in facilitating this cooperation, the commonality of criminal constitutions is straightforward. We argued that constitutions perform three important functions in criminal organizations: they strengthen organizational consensus by creating common knowledge; they regulate individual activities that generate significant negative externalities for the organization; and they create information that coordinates organization members on the enforcement of organizational rules. By performing these functions, criminal

constitutions facilitate criminal cooperation and, thus, criminal organizations' profits. Future work should investigate empirically to what extent constitutions have enhanced profit for various criminal organizations along the lines that our theory suggests.

This paper has emphasized the commonality of constitutions in criminal organizations. However, in light of the benefits our analysis finds that constitutions create for criminals, why doesn't *every* criminal organization rely on a constitution to perform these functions? Our theory of criminal constitutions suggests that criminal organizations adopt constitutions because they enhance profits by promoting organizational consensus, regulating externality generating behaviors, and helping enforce organizational rules. However, constitutions aren't the only way to achieve these goals.

For example, families often secure a high degree of internal consensus, restrict privately beneficial activities that could be destructive to the whole, and enforce rules *without* the aid of written constitutions. They rely on their "members'" small numbers, close proximity to one another, and social closeness to facilitate these ends without constitutions. Criminal organizations that share these features can also facilitate these ends without constitutions. Criminal organizations that are small, have highly homogeneous membership, and reside in close proximity will benefit less from creating constitutions. Because of their particular features, such organizations enjoy "natural" consensus, find it cheaper to identify organizationally harmful behavior, and find it easier to coordinate an effective response to such behavior.

Since, like creating any contract, creating a constitution is costly, the lower benefit of constitutions to small, homogeneous criminal organizations makes them less likely to adopt constitutions than large criminal organizations whose members are scattered and don't have strong extra-organizational ties. Our theory of criminal constitutions therefore predicts that some

criminal organizations with these characteristics will find creating a constitution unprofitable and therefore will not have one. The evidence is consistent with this prediction. Knox (2006: 22-25) notes that the use of criminal constitutions is associated with larger group size and more complicated operations. Similarly, Jankowski (1995: 82) finds that smaller street gangs that engage in simple criminal activities are less likely to rely on constitutions than larger, more sophisticated gangs are. In supporting the idea that criminal organizations only adopt constitutions when they anticipate net benefits from doing so, this evidence also supports the idea that criminal constitutions are at least sometimes effective. If they were not, constitutions would always offer net costs to criminal organizations that adopted them, making it puzzling why *any* criminal organization would choose to adopt them, let alone why many criminal organizations choose to.

Just as some criminal organizations do not find it profitable to create constitutions at all, our analysis highlights that among the criminal organizations that do find it profitable to create constitutions, the particular points of constitutional emphasis differ. This reflects different criminal organizations' specific contexts and thus needs. For example, compared to the NF, 18th-century Caribbean pirates found it easier to detect rule violations because their organizations were much smaller and their organizations' members were in much closer proximity.¹⁴ Pirates could obtain information about rule infractions more easily than NF members can. The need to create information about rule violations through the constitution in pirates' organization was therefore less urgent than in the NF. Consequently, pirate constitutions emphasized consensus building and the coordination of diverse individuals more than it emphasized generating

¹⁴ Though monitoring production activities was probably more difficult in pirate organizations than in the NF despite pirate organizations' smaller size and more physically concentrated membership. As Leeson and Rogers (2009) point out, piracy's production activities were necessarily jointly produced and therefore harder to monitor. In contrast, many of the production activities of the NF are individually produced and thus easier to monitor.

information about misconduct. In contrast, NF members are almost exclusively Californian Hispanics. So consensus is relatively easier to attain in this organization than among pirates. However, because the NF is very large and its membership is dispersed, it faces significantly higher costs of generating information about rule violations. The NF's constitution therefore focuses more on mechanisms that facilitate the discovery of misconduct.

Criminal organizations use constitutions for essentially the same reason legitimate organizations do: to promote organizational cooperation. Of course, the particulars of criminal constitutions are very different from the particulars of legitimate constitutions because the contexts in which they are developed differ. For example, the NF constitution requires members to engage in violence with enemies, vow to serve the gang for the rest of their lives, and agree to be killed if they show cowardice or treachery. Inmates operate in an environment characterized frequently by violence and the threat of violence, making constitutional rules that address violent interactions important in the criminal context. Similar constitutional rules are unnecessary in legitimate organizations because they do not operate in the context of violent interactions. Thus legitimate organization's constitutions do not have such elements.

The different contexts that criminal organizations operate in compared to their legitimate counterparts lead to other differences in criminal versus legitimate organizations' constitutions as well. For example, as discussed above, the NF constitution contains a lifetime membership rule, which promotes organizational consensus. Legitimate organizations' constitutions don't contain such provisions because (a), for reasons discussed above, they have less need to promote organizational consensus than criminal organizations and (b), such constitutional rules are not legally enforceable. Legal enforceability is of course not a concern for criminal organizations, which do not rely on state courts to enforce their rules and for which this fact is not a binding

constraint on constitutional provisions. So, while the NF constitution has a lifetime membership rule, country club constitutions, for example, do not.

As a final example of how criminal and legitimate organizations' different contexts lead to different substantive specifics in their respective constitutions, consider how the fact that criminal organizations cannot rely on government to provide the "basics" of social order—rules against violence and theft—influences their constitutions' substance compared to that of legitimate organizations, which can rely on government to provides these "basics:" criminal constitutions tend to include rules regulating violence and theft whereas legitimate organizations' constitutions do not. The Kiwanis Club does not need a constitutional rule that prohibits murder. Its members rely on the government's rule, which prohibits murder instead. But for Caribbean pirates, for example, things were different. Pirates' organization had no rules of social order unless their organization created them. Their criminal constitutions therefore included such rules.

Despite these important differences in constitutional specifics, as noted above, both criminal and legitimate organizations use constitutions for the same general purpose: to facilitate organizational cooperation in the face of information costs, coordination problems, and externalities. The particular information costs, coordination problems, and externalities that criminal and legitimate organizations' distinct contexts create differ. But outlaws' need for constitutions to promote organizational cooperation to effectively pursue their end—illicit profit—is just as pronounced as legitimate persons' need for organizational cooperation to pursue their more noble ends, if not more so owing to outlaws' unsavory characteristics.

Appendix

This Appendix reproduces the constitutions of Captain Bartholomew Robert's pirate crew and La Nuestra Familia prison gang. The former constitution is contained in the 18th-century pirate chronicler Captain Charles Johnson's (1726-28 [1999]) book, *A General History of the Pyrates*. The latter constitution is contained in Nina Fuentes' (2006) *The Rise and Fall of the Nuestra Familia*.

Each component of these constitutions has been coded (in parenthesis) to identify its function in terms of the theory of criminal constitutions that this paper presents. (1) indicates that a provision relates to the common knowledge function of criminal constitutions. (2) indicates that a provision limits behavior within organizations that may be individually beneficial but harmful to the organization. (3) indicates that a provision provides information about misconduct and/or mechanisms for enforcement. A constitutional provision can perform multiple purposes, so many of the provisions have been coded for multiple functions.

The Constitution of Captain Bartholomew Roberts' Pirate Crew

I. Every Man has a Vote in the Affairs of Moment; has equal Title to the fresh Provisions, or strong Liquors, at any Time seized, and may use them at Pleasure, unless a Scarcity make it necessary, for the Good of all, to vote a Retrenchment. (1, 3)

II. Every Man to be called fairly in Turn, by List, on board of Prizes, because, (over and above their proper Share) they were on these Occasions allowed a Shift of Cloaths: But if they defrauded the Company to the Value of a Dollar, in Plate, Jewels, or Money, Marooning was their Punishment. If the Robbery was only betwixt one another, they contented themselves with slitting the Ears and Nose of him that was Guilty, and set him on Shore, not in an uninhabited Place, but somewhere, where he was sure to encounter Hardships. (1, 3)

III. No person to Game at Cards or Dice for Money. (2)

IV. The Lights and Candles to be put out at eight a-Clock at Night: If any of the Crew, after that Hour, still remained enclined for Drinking, they were to do it on the open Deck. (2)

V. To keep their Piece, Pistols, and Cutlash clean, and fit for Service. (2)

VI. No Boy or Woman to be allowed amongst them. If any Man were found seducing any of the latter Sex, and carry'd her to Sea, disguised, he was to suffer Death. (2)

VII. To Desert the Ship, or their Quarters in Battle, was punished with Death or Marooning. (3)

VIII. No striking one another on board, but every Man's Quarrels to be ended on Shore, at Sword and Pistol. (2)

IX. No Man to talk of breaking up their Way of Living, till each shared a 1000 l. If in order to this, any Man should lose a Limb, or become a Cripple in their Service, he was to have 800 Dollars, out of the public Stock, and for lesser Hurts, proportionately. (2)

X. The Captain and Quarter-Master to receive two Shares of a Prize; the Master, Boatswain, and Gunner, one Share and a half, and other Officers one and a Quarter. (1)

XI. The Musicians to have Rest on the Sabbath Day, but the other six Days and Nights, none without special Favour. (3)

The Supreme Power Structure of Nuestra Familia

Article 1: Supreme Commander

Section I. The Nuestro General (NG) is the supreme power in the organization known as La Nuestra Familia. His power shall have no limit (within Art. I, II, III). Solely he can declare war for the entire O and once in a state of war, peace shall not prevail until the announcement from the NG. (1, 3)

Section II. NG will be automatically released from any duties and responsibilities upon receiving a date of one year or less. (1)

Section III. NG will be a seasoned experienced warrior. This qualification is mandatory in order to hold this high office. When the time comes for the NG to pick a successor, he will do so from the ranks of commanders at his disposal. (1, 3)

Section III (a). In case of emergency and the NG is downed, the captain at the *pinta* will take over and automatically declare war until the first captain can automatically assume the rank of NG. In this emergency, the home captain will have no power to appoint or replace any or all positions in the high command of La Nuestra Familia. (1, 3)

Section IV. NG has the power, in the state of war conditions (as regards to structure), to appoint captains. In peace time, he will retain the power to discharge any commander that is negligent in

the functions of his position; however, he will relinquish his power to appoint captains if the *familia* where the captain has been discharged has no reserve captain to take command. The *familia* body of said disposed captain will elect a successor. (3)

Section IV (a). A discharged commander will lose his rank of captain and said authority of that rank. (1, 3)

Section V. Only applies in time of peace [sic]. (1)

Section V (a). NG, upon receiving a complaint from one of his *soldados* that the authority of which he is under is unjustly using their power over him due to personal conflict, he (NG) will appoint a committee of no less than three *soldados* from that particular clan to investigate said charges, and each is to report to the NG. (3)

Section VI. NG will always keep in touch with all familianos leaving to the streets, until a branch in union of La Nuestra Familia is established. (2)

Section VII. NG can have as many as ten (10) active commanders at one time. He will grade them as 1st, 2nd, 3rd, and so on according to their leadership abilities and their overall foresight. (1)

Section VIII. NG will appoint a first captain or commander who will be his successor, and if the NG becomes incommunicado, the first captain of the Nuestra Familia will have the responsibility to see that every captain of said O works and governs within this constitution. (1, 3)

Section IX. The successor only applies as far as the first captain is concerned. The NG has the right to select the first captain. (1, 3)

Article I (a). Discharge of all duties from NG.

Section I. NG may be impeached from office where it is the opinion of all commanders holding office at that time that he isn't working in the best interest of the organization. This can be derived from a petition or document with signatures in each captain's own writing. (3)

Section II. Upon receiving the document, the NG will automatically lose all power, but he may challenge the legality of the signatures, in which case a *soldado* will be appointed by the body to write to the captains and verify their votes. (3)

Section III. Upon confirmation of a discharge of the NG, he will lose all rank, power, and the successor will move into that position. (3)

Article II. Objectives and bylaws of Nuestra Familia

Section I. The primary purpose and goals of this O is for the betterment of its members and the building up of this O on the outside into a strong and self-supporting *familia*. (1)

Section II. All members will work solely for this objective and will put all personal goals and feelings aside until said fulfillment is accomplished. (1)

Section III. A familianos will not be released from his obligation towards the O because he is released from prison, but will work twice as hard to see that a *familia* is established and works in hand with the O already established behind the walls (*pinta*). (1)

Section IV. A familianos will remain a member until death or otherwise discharged from the O. He will always be subject to put the best interest of the O first and always above everything else, in prison or out. (1, 3)

Section V. An automatic death sentence will be put on a familianos that turns coward, traitor or deserter. Under no other circumstances will a brother *familiano* be responsible for spilling the blood of another *familiano*. To do so will be considered an act of treason. (1, 3)

Section VI. In order for (Art. II, Sec. V) to be invoked, the regimental governing body will hold a vote amongst themselves and pass sentence. Majority rules. In the case of a tie vote, the decision will lie with the captain, and his decision shall be final. (3)

Section VII. All present familianos in said O La Nuestra Familia acknowledge said constitution upon reading it and will be held accountable for his actions if said constitution is not followed. (1)

Article III. Regimental Captains

Section I. A captain is the regimental commander of La Nuestra Familia and holds the rank just below el NG. Their responsibilities are to lead and direct La Familia regiments under his care to successfully accomplish the goals set forth in (Art. I, Sec. V). (1, 3)

Section II. For this purpose, he (captain) shall have the choice of selecting his own lieutenants (*tenientes*) and shall have the power to dismiss the lieutenant if he (captain) feels that they are not accepting or handling their responsibilities of leadership. In times of peace, a dismissed lieutenant has the option to invoke (Art. I, Sec. V). (1, 3)

Section III. Due to circumstances beyond our control, it may be that there will be more than one captain in a regiment at the same time. If a captain is transferred from a *familia* regiment to another where there is already a captain, the captain with the highest rank will take command, and the others will be in reserve according to their ranks. (1, 2, 3)

Section IV (a). A captain will have a grade rating of 1st, 2nd, 3rd and so forth, as (Art. III, Sec. III) can be invoked. Also, the lower the numbered rating, the greater their authority. No captain can override or contradict the orders of a higher-ranking commander without direction of Nuestra Familia's NG. (1, 3)

Section IV (b). All other captains in a regiment other than the governing captain will be classified as reserves and will act as advisors, although they will not have any powers as to the running of the regiment. (1, 3)

Section V. There shall never be more than ten (10) captains in the O at any time. This includes reserves. If there are already ten captains in the O and a regiment is without a captain or commander due to (Art. III, Sec. III), the 1st lieutenant will run the *familia* (regiment) temporarily until a commander arrives or there is an opening in the ranks of captain. (1, 3)

Section VI. The reserve captains will only take power if the governing one is downed or discharged by the NG. It will be the duty of the governing commander to take and show him the internal functions of the regiment in order that the reserve captain will be qualified to govern the regiment if need arrives. (1, 3)

Section VII. All captains will hold equal rank and therefore one cannot order the other, except under (Art. III, Sec. III), or where the reserve captain is hindering the rules and orders that the governing captain has set forth efficiently running the *familia* (regiment). In that case, the reserve captain will cease to interfere or he will be brought before the NG. (1, 2, 3)

Section VIII. The reserve captain only has as much power as the governing commander wants bestowed on him and not more. The *familia* body, should at all times know the structure of the reserve captain. (1, 3)

Section IX. In time of war, the captain is only answerable to the NG, and no *soldado* shall question the orders set forth by him personally or one of his *tenientes*. To question said orders could be a treasonable act, as outlined in (Art. I, II, Sec. V), depending on the seriousness of the offense, which will lie with the captain to determine. (1, 2, 3)

Section X. In time of peace, as in time of war, a captain is answerable to the NG; however, in time of peace, if a *familianos soldado* feels that the power or powers of the structure in the regiment is misusing their appointed authority against him due to conflicting personalities, he has a right as an honorable member of this O to appeal to the supreme commander NG, as per (Art. I, Sec. V). (3)

Section XI. The commander shall be responsible for the welfare and lives the *soldados* under his command at all times, and there shall be no suicidal missions ordered by a commander. A suicidal mission shall be translated as an act where the *soldado* has no chance of survival. (3)

Section XII. Home captain where NG has his headquarters shall be held responsible if anything should happen to the NG. It will be the duty of the captain to personally see that two of his best warriors be with the NG whenever possible. If the NG is downed, the captain will be stripped of all rank after the state of war is over (Art. I, Sec. III a). (3)

Article IV. Functions and qualities of a lieutenant

Section I. A lieutenant is third in the power ladder of La Nuestra Familia, he is under the captain. He's the representative of La Nuestra Familia, as he will be in contact with familianos at all times and, therefore, he should at all times set a good example for the *soldados* to follow. (1)

Section II (a). While in a state of war, and the arms quota drops below the specified requirement, it shall be first priority of the lieutenant to restore to restore to par as outlined in (Art. V, Sec. II) [sic]. (1, 2, 3)

Section III. Each lieutenant shall have a certain number of *soldados* assigned to him. He shall be responsible for their schooling and basic needs and conduct. (1, 3)

Section III (a). Whenever one or all of his *soldados* goes into combat with any of the enemies of La Nuestra Familia, he (lieutenant) shall present the captain with a full report of what occurred. (1, 3)

Section IV. The lieutenants shall have ratings of 1st, 2nd, 3rd. This rating shall be given to them by the captain according to their experience and leadership abilities. (1, 3)

Section V. It shall be the duties of the lieutenants to keep a record of all known names and numbers of La Nuestra Familia. Each day, he shall check all new arrivals who entered his territory against his record book and make a report to his captain. (1)

Section V (a). All lieutenants shall question all new familianos assigned to him for information as to unknown enemies of La Nuestra Familia. New information shall go into the record book and whenever one of his *soldados* is transferred to another *pinta*, a copy of the record book shall be sent with the *soldado*. (1)

Section V (b). It shall be the responsibility of the lieutenant to inform the captain of the departure of his *soldados* in order that the *familia* of the other regiment can be informed. (1, 2)

Article V. Familiano Soldado

Section I. All requests for membership into this O shall be made to the captain. Any member can make such a request for any individual providing such requesting *familiano* is will to accept full responsibility for said individual. (1, 2)

Section II. Final decision for membership shall not be made until 30 days have elapsed from such a request, and the governing body of the regiment must approve the request for any new membership. (1, 2)

Section III. No applicant will be considered for membership if he (applicant) misrepresents his qualifications. Also, once a member and *soldado* misrepresents his actions in battle for the benefit of making his actions seem more valorous, he will be subject to be disqualified under (Art. II, Sec. V b), a minor offense, or (Art. I, Sec. V), expelled from the O, depending upon the circumstances and seriousness of the lie. (1, 2)

Section IV. Membership of this O shall be restricted only to those of Latin extraction. No maximum or minimum shall be invoked by this constitution in so far as membership in this O is concerned; however, such limitations may be established by NG as to be necessary to maintain proper control, although others of other extractions (races) will be considered with the consent of both the captain and the NG. (1, 2)

Article VI. Discipline and Conduct.

Section I. The regimental captains shall pass sentence for all minor infractions of conduct. In time of war, there will be no appeal to NG. (1, 3)

Section II. Punishment shall be administered by the regimental lieutenant (Art. IV, Sec. III) or by the regiment as a whole, when ordered by the *familia* commander. (1, 3)

Section III. All *familianos* shall be subject to disciplinary action or immediate expulsion from this O (Art. II, Sec. V). In the case of misconduct or behavior unbecoming of a member, said conditions shall prevail with regards to the individual towards another member, the O as a whole, or his superiors. (1, 2, 3)

Section IV. Under no conditions will there be fighting between *familianos*. To do so will bring on disciplinary action and if blood is spilled, it will result in the expulsion of one or all parties involved (Art II, Sec V). (1, 2)

Section V. No member of this O shall put material things, whether it be drugs, money, women, or punks (as related to the *pinta*) before the best interest of La Nuestra Familia or a *familianos*. (1, 2)

Section V (a). No *familiano* shall lie about his position in La Nuestra Familia nor when discussing *familianos* business to a superior or a brother member. There shall be no lying or giving false impressions. (1, 2)

Section VI. It is the sacred duty of a *familianos guerrero* to do battle for La Nuestra Familia, and no *soldado* should feel that because he fought for his O that he is entitled to special privileges. All that matters is that you as a *guerrero* of La Nuestra Familia are living up to your responsibilities. Remember that a true *guerrero* does not need to boast of his accomplishments. (1, 2)

Section VII. Under no circumstances is any of this constitution to be altered without notification of el NG and one third of his captain's staff, nor shall a *familiano* or *familianos* regiment put their own interpretations upon said constitution. It is to be read in its entirety. All sections that relate to one concept are to be read as such. (1, 2)

References

- Anderson, Annelise. 1979. *The Business of Organized Crime: A Cosa Nostra Family*. Palo Alto, CA: The Hoover Institution.
- Anderson, David A. 1999. "The Aggregate Burden of Crime" *Journal of Law and Economics* 42(2): 611-642.
- Arlacchi, Pino. 1988. *Mafia Business: The Mafia Ethic and the Spirit of Capitalism*. Oxford: Oxford University Press.
- Becker, Gary S. 1968. "Crime and Punishment: An Economic Approach" *Journal of Political Economy* 76(2): 169-217.
- Benson, Bruce. 1990. *The Enterprise of Law: Justice without the State*. San Francisco, CA: Pacific Research Institute for Public Policy.
- California Department of Justice. 2003. *Organized Crime in California: Annual Report to the California Legislature 2003*.
- Chang, Juin-Jen, Huei-Chung Lu, and Mingshen Chen. 2005. "Organized Crime or Individual Crime: Endogenous Size of a Criminal Organization and the Optimal Law Enforcement" *Economic Inquiry* 43(3): 661-675.
- Dick, Andrew R. 1995. "When Does Organized Crime Pay? A Transaction Cost Analysis" *International Review of Law and Economics* 15(1): 25-45.
- DiIulio, John J., Jr. 1996. "Help Wanted: Economists, Crime and Public Policy" *Journal of Economic Perspectives* 10(1): 3-24
- Downing, Clement. 1737. *A Compendious History of the Indian Wars*. London: Printed for T. Cooper.
- Ellickson, Robert C. 2005. *Order without Law: How Neighbors Settle Disputes*. Cambridge,

- MA: Harvard University Press.
- Fiorentini, Gianluca, and Sam Peltzman, eds. 1995. *The Economics of Organised Crime*. Cambridge, UK: Cambridge University Press.
- Federal Bureau of Investigation. 2008. Freedom of Information and Privacy Acts Subject file: La Nuestra Familia
http://foia.fbi.gov/filelink.html?file=/lanuestrafamily/lanuestrafamily_part01.pdf.
- Fuentes, Nina. 2006. *The Rise and Fall of the Nuestra Familia*. Jefferson, WI: Know Gangs Publishing.
- Gambetta, Diego. 1993. *The Sicilian Mafia: The Business of Private Protection*. Cambridge, MA: Harvard University Press.
- Gambetta, Diego. 1994. "Inscrutable Markets" *Rationality and Society* 6(3): 353-368.
- Gambetta, Deigo. 2009. *Codes of the Underworld: How Criminals Communicate*. Princeton: Princeton University Press.
- Garoupa, Nuno. 2000. "The Economics of Organized Crime and Optimal Law Enforcement" *Economic Inquiry* 38(2): 278–88.
- Glaeser, Edward L., Bruce Sacerdote, and Jose A. Scheinkman. 1996. "Crime and Social Interactions" *Quarterly Journal of Economics* 111(2): 507-548.
- Jankowski, Martin Sanchez. 1991. *Islands in the Streets: Gangs and American Urban Society*. Berkeley: University of California Press.
- Jennings, William. 1984. "A Note on the Economics of Organized Crime" *Eastern Economic Journal* 10(3): 315–21.
- Johnson, Charles. [1726–28] 1999. *A General History of the Pyrates, From Their First Rise and*

- Settlement in the Island of Providence, to the Present Time*. Edited by Manuel Schonhorn. New York: Dover.
- Kaminski, Marek. 2004. *Games Prisoners Play: The Tragicomic Worlds of Polish Prison*. New Jersey: Princeton University Press.
- Kinkor, Kenneth. 2001. "Black Men under the Black Flag." In C.R. Pennell, *Bandits at Sea: A Pirates Reader*. New York: New York University Press.
- Knox, George W. 2004. "The Melanics: A Gang Profile Analysis" in George W. Knox, *Gang Profiles: An Analogy*. Peotone, IL: New Chicago School Press.
- Knox, George W. 2006. *An Introduction to Gangs*. Peotone, IL: New Chicago School Press.
- Konrad, Kai A. and Stergios Skaperdas. 1997. "Credible Threats in Extortion" *Journal of Economic Behavior and Organization* 33(1): 23-39.
- Konrad, Kai, and Stergios Skaperdas. 1998. "Extortion" *Economica* 65(260): 461-77.
- Leeson, Peter T. 2007a. "An-arrgh-chy: The Law and Economics of Pirate Organization." *Journal of Political Economy* 115(6): 1049-1094.
- Leeson, Peter T. 2007b. "Trading with Bandits" *Journal of Law and Economics* 50(2) 2007: 303-321.
- Leeson, Peter T. 2007c. "Efficient Anarchy" *Public Choice* 130(1-2): 41-53.
- Leeson, Peter T. 2007d. "Better Off Stateless: Somalia Before and After Government Collapse" *Journal of Comparative Economics* 35(4): 689-710.
- Leeson, Peter T. 2008. "Social Distance and Self-Enforcing Exchange" *Journal of Legal Studies* 37(1): 161-188.
- Leeson, Peter T. 2009a. "The Calculus of Piratical Consent: The Myth of the Myth of Social Contract" *Public Choice* 139(3-4): 443-459.

- Leeson, Peter T. 2009b. *The Invisible Hook: The Hidden Economics of Pirates*. Princeton: Princeton University Press.
- Leeson, Peter T. 2009c. “Rational Choice, Round Robin, and Rebellion: An Institutional Solution to the Problems of Revolution.” *Journal of Economic Behavior and Organization*, forthcoming.
- Leeson, Peter T. 2009d. “The Invisible Hook: The Law and Economics of Pirate Tolerance.” *New York University Journal of Law and Liberty* 4(2) 139-171.
- Leeson, Peter T. 2009e. “The Laws of Lawlessness” *Journal of Legal Studies* 38(2): 471-503.
- Leeson, Peter T. and Douglas B. Rogers. 2009. “Organizing Crime.” Mimeo.
- Levitt, Steven D. 1998. “Juvenile Crime and Punishment” *Journal of Political Economy* 106(6): 1156-1185.
- Levitt, Steven D. 2004. “Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six That Do Not” *Journal of Economic Perspectives* 18(1): 163-190.
- Lewis, George. 1980. “Social Groupings in Organized Crime: The Case of La Nuestra Familia” *Deviant Behavior: An Interdisciplinary Journal* 1(2): 129–143.
- Lubrano, Alfred. 2007. “Unconventional Wisdom: Get Real Rules for American Mobsters” *The Philadelphia Inquirer*, November 17, E1.
- Marx, Jennifer G. 1996. “The Golden Age of Piracy,” In David Cordingly, ed., *Pirates: Terror on the High Seas—From the Caribbean to the South China Sea*. Atlanta: Turner Publishing.
- Miron, Jeffrey A. and Jeffrey Zweibel. 1995. “The Economic Case Against Drug Prohibition” *Journal of Economic Perspectives* 9(4): 175-192.
- Morales, Gabriel C. 2008. *La Familia – The Family: Prison Gangs in America*. San Antonio,

TX: Mungia Printers

Pinkerton v. United States. 1946. 328 U.S. 640.

Rediker, Marcus. 1987. *Between the Devil and the Deep Blue Sea: Merchant Seamen, Pirates and the Anglo-American Maritime World, 1700–1750*. Cambridge: Cambridge University Press.

Reuter, Peter. 1985. *Disorganized Crime: The Economics of the Visible Hand*. Cambridge: MIT Press.

Reynolds, Julia. 2008. “Gang Leader Took Unusual Route to the Top.” *Monterey County Herald*, February 10.

Schaeffer, Emily C. 2008. “Remittances and Reputations of Hawala Money Transfer Systems: Self-Enforcing Exchange on an International Scale” *Journal of Private Enterprise* 24(1): 95-117.

Skaperdas, Stergios. 2001. “The Political Economy of Organized Crime: Providing Protection when the State does Not,” *Economics of Governance* 2(3): 173–202.

Skarbek, David B. 2008. “Putting the ‘Con’ into Constitutions: The Economics of Prison Gangs” *Journal of Law, Economics, & Organization*, forthcoming.

Smith, Alastair and Federico Varese. 2001. “Payment, Protection, and Punishment: The Role of Information and Reputation in the Mafia” *Rationality & Society* 13(3): 349-393.

Sobel, Russell, and Brian Osoba. 2009. “Youth Gangs as Pseudo-Governments: Implications for Violent Crime” *Southern Economics Journal*. 75(4): 996-1018

Stringham, Edward. ed. 2007. *Anarchy and the Law: The Political Economy of Choice*. Oakland, CA: Independent Institute.

- Varese, Federico. 2006a. "How Mafias Migrate: The Case of the 'Ndrangheta in Northern Italy"
Law & Society Review 40(2): 411-444.
- Varese, Federico. 2006b. "The Secret History of Japanese Cinema: The Yakuza Movies" *Global Crime* 7(1): 105-124.